IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1047 of 1980

HONOURABLE MR.JUSTICE KS JHAVERI

==========

HAJARSINGH CHANDANSINGH - Appellant(s)
Versus
PUSHPABEN MURLIDHAR GIDWANI - Defendant(s)

==========

Appearance :
for Appellant(s) : 1 - 2.
MR SHALIN MENTA for Defendant(s) : 1 - 8, 8.2.3, 8.2.4, 8.2.5,8.2.7
None for Defendant(s) : 8, 8.2.2, 8.2.6, 8.2.8, 8.2.9, 8.3.1, 8.3.2, 8.3.3, 8.3.4, 8.3.5, 8.3.6,8.3.7 - 9.
- for Defendant(s) : 0.0.0,0.0.0
- for Defendant(s) : 0.0.0
- for Defendant(s) : 0.0.0

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. This appeal has been listed before this Court, but none appears for the parties. Since this is an old matter, the same has been taken up for hearing.

2. This appeal is directed against the judgement and award dated 31st March 1980 passed by the Motor Accident Claims Tribunal No.1, Vadodara, in Motor Accident Claim Application no.23 of 1979 whereby the Tribunal has awarded a sum of Rs.81000/- with proportionate costs and interest at the rate of

6% per annum.

3. The accident in question happened when a fiat car rammed into the back of a stationary truck. One Murlidhar Gidwani expired in the accident and therefore the claimants filed the aforesaid claim petition claiming compensation in the sum of Rs.1,50,000/- which was partly allowed as stated hereinabove.

4. I have gone through the relevant record of the case. The grievance of the appellants is that the Tribunal ought to have held that there was no rashness or negligence on the art of the respondent no.13 and it is because of the negligence of the driver of the car the accident in question occurred.

5. After considering the documentary evidence the Tribunal has held as under:

> "I am on the whole, fully convinced that it was due to the composite negligence of the two drivers that the accident had occurred. As between the two drivers, the driver of the truck must take the greater responsibility. It was he who had parked the truck for repairs without taking all the necessary precautions to warn the vehicles using the road. The parking of a vehicle on the road as this truck was parked, posed a serious danger to other vehicles passing on the road especially those coming from behind. By parking it more on the kutcha road, this danger could have been considerably reduced. Even if that were not possible, guard stones could have been kept at a safe distance to warn the vehicles coming from behind. The truck driver must therefore, take the

> greater responsibility. I consider it reasonable to apportion negligence between the truck driver and the fiat car driver in the ratio of 70 per cent and 30 per cent. I accordingly find that the accident occurred due to the composite negligence of the opponent no.1 and the opponent no.4 of whom the opponent no.4 is held negligence to the extent of 70 per cent while the opponent no.1' s negligence is assessed at 30 per cent."

6. There is nothing on record to show that the finding of the Tribunal is perverse and requires interference. In para 5 of the judgement the Tribunal has considered this aspect in details and I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal.

7. In the premises aforesaid the appeal is dismissed. No order as to costs.

[K.S. JHAVERI, J.]

ar